

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LAWRENCE DOW,

Plaintiff,
-against-

OGLEBAY NORTON and SUBSIDIARIES;
COLUMBIA TRANSPORTATION CO.,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

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MEMORANDUM AND ORDER
No. 05-CV-4299 (FB) (LB)

Appearances:

For the Plaintiff:

LAWRENCE DOW, *Pro Se*
2886 Briggs Avenue, Apt. 1B
Bronx, NY 10458

BLOCK, Senior District Judge:

On June 26, 2006, Magistrate Judge Lois Bloom issued a Report and Recommendation ("R & R") recommending that the action be dismissed without prejudice for failure to prosecute; in particular, plaintiff "did not file proof of service or show good cause why service has not been made, nor has he written to the Court to voluntarily discontinue this action." R & R at 2. The R & R states that "the parties shall have ten (10) days from service of this Report to file written objections . . . with the Clerk of the Court," *id.*, and that "[f]ailure to file a timely objection to this Report generally waives any further judicial review." *Id.* Plaintiff was mailed a copy of the R & R on or about June 28, 2006. See Docket Entry #6 (Receipt). To date, plaintiff has not filed any objection.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review.

See Thomas v. Arn, 474 U.S. 140, 149-50 (1985); Mario v. P & C Food Mkts., Inc., 313 F.3d 758,

766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of the Magistrate Bloom's R & R, the Court adopts it without *de novo* review. The Clerk is directed to enter the dismissal in accordance with the R & R.

SO ORDERED.

Brooklyn, New York
October 3, 2006


FREDERIC BLOCK
Senior United States District Judge